

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 04B of 09

The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1 **SECTION 69.** 48.30 (2) of the statutes is amended to read:

2 48.30 (2) At the commencement of the hearing under this section the child and
3 the parent, guardian ~~or~~, legal custodian, or Indian custodian; the child expectant
4 mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian, and the unborn
5 child through the unborn child's guardian ad litem; or the adult expectant mother
6 and the unborn child through the unborn child's guardian ad litem_; shall be advised
7 of their rights as specified in s. 48.243 and shall be informed that a request for a jury
8 trial or for a substitution of judge under s. 48.29 must be made before the end of the
9 plea hearing or be is waived. Nonpetitioning parties, including the child, shall be
10 granted a continuance of the plea hearing if they wish to consult with an attorney
11 on the request for a jury trial or substitution of a judge.

12 **SECTION 70.** 48.30 (6) (a) of the statutes is amended to read:

13 48.30 (6) (a) If a petition is not contested, the court, subject to s. 48.299 (9), shall
14 set a date for the dispositional hearing which allows reasonable time for the parties
15 to prepare but is no more than 10 days after the plea hearing for a child who is held
16 in secure custody and no more than 30 days after the plea hearing for a child or an
17 expectant mother who is not held in secure custody. If all parties consent the court
18 may proceed immediately with the dispositional hearing.

19 **SECTION 71.** 48.30 (7) of the statutes is amended to read:

20 48.30 (7) If the petition is contested, the court, subject to s. 48.299 (9), shall set
21 a date for the fact-finding hearing which allows reasonable time for the parties to
22 prepare but is no more than 20 days after the plea hearing for a child who is held in
23 secure custody and no more than 30 days after the plea hearing for a child or an
24 expectant mother who is not held in secure custody.

25 **SECTION 72.** 48.305 of the statutes is amended to read:

1 **48.305 Hearing upon the involuntary removal of a child or expectant**
2 **mother.** Notwithstanding other time periods for hearings under this chapter, if a
3 child is removed from the physical custody of the child's parent or guardian under
4 s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or
5 if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2.
6 without the consent of the expectant mother, the court, subject to s. 48.299 (9), shall
7 schedule a plea hearing and fact-finding hearing within 30 days after a request from
8 the parent or guardian from whom custody was removed or from the adult expectant
9 mother who was taken into custody. The plea hearing and fact-finding hearing may
10 be combined. This time period may be extended only with the consent of the
11 requesting parent, guardian or expectant mother.

12 **SECTION 73.** 48.31 (1) of the statutes is amended to read:

13 48.31 (1) In this section, "fact-finding hearing" means a hearing to determine
14 if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate
15 parental rights are proved by clear and convincing evidence and, in the case of a
16 petition to terminate parental rights to an Indian child, to determine if the
17 allegations under s. 48.42 (1) (e) are proved beyond a reasonable doubt as provided
18 in s. 48.028 (4) (e).

~~***Note: The DHFS note asks why TPR for a non-Indian child is included in this subsection. The reference to TPR for any child is current law. The underscored reference to TPR for an Indian child is added by this draft. The point of amending this subsection is to clarify that the grounds for TPR for any child, Indian or non-Indian, must be proved by clear and convincing evidence, but that serious damage and active efforts for an Indian child must be proved beyond a reasonable doubt.~~

~~The DHFS note also asks whether the testimony of a qualified expert witness is required as to serious damage to the Indian child at the fact-finding hearing or at the dispositional hearing. That testimony may be required at both hearings. Specifically, the testimony would always be required at the fact-finding hearing because serious damage to the Indian child is relevant to the fitness or unfitness of the parent, which is determined at the close of the fact-finding hearing. That testimony may also be required at the dispositional hearing because, notwithstanding a finding of unfitness, the court~~

~~still has the discretion to dismiss a TPR petition under s. 48.427 (2) if TPR is not warranted.~~

SECTION 74. 48.31 (7) (a) of the statutes is amended to read:

48.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s. 48.299 (9), shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than 10 days after the fact-finding hearing for a child in secure custody and no more than 30 days after the fact-finding hearing for a child or expectant mother who is not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

SECTION 75. 48.315 (1) (j) of the statutes is created to read:

48.315 (1) (j) A reasonable period of delay, not to exceed 20 days, in a proceeding involving the out-of-home care placement of or termination of parental rights to a child who is or may be an Indian child, or involving an unborn child who, when born, may be an Indian child, resulting from a continuance granted at the request of the child's parent, Indian custodian, or tribe, or of the unborn child's expectant mother or the Indian tribe in which unborn child may be eligible for membership when born, to enable the requester to prepare for the proceeding.

~~NOTE: 25 USC 1912 (a) limits the continuance to prepare for a hearing to 20 days.~~

SECTION 76. 48.315 (1m) of the statutes is amended to read:

48.315 (1m) Subsection (1) (a), (d), (e) ~~and, (fm), (g), and (j)~~ does not apply to proceedings under s. 48.375 (7).

SECTION 77. 48.315 (2) of the statutes is amended to read:

48.315 (2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent

1 of the district attorney or the parties, the request of a person specified in sub. (1) (j),
2 and the interest of the public in the prompt disposition of cases.

3 **SECTION 78.** 48.32 (1) (c) 1. of the statutes is renumbered 48.32 (1) (c) and
4 amended to read:

5 48.32 (1) (c) If the judge or circuit court commissioner finds that any of the
6 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
7 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m)
8 within 30 days after the date of that finding to determine the permanency plan for
9 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
10 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
11 ~~than 5 days before the date of the hearing.~~

12 **SECTION 79.** 48.32 (1) (c) 2. of the statutes is repealed.

13 **SECTION 80.** 48.32 (1) (c) 3. of the statutes is repealed.

14 **SECTION 81.** 48.33 (4) (d) of the statutes is created to read:

15 48.33 (4) (d) If the agency knows or has reason to know that the child is an
16 Indian child, a description of any efforts undertaken to determine whether the child
17 is an Indian child; specific information showing that continued custody of the child
18 by the parent or Indian custodian is likely to result in serious emotional or physical
19 damage to the child under s. 48.028 (4) (d) 1.; specific information showing that the
20 county department, department in a county having a population of 500,000 or more,
21 or agency primarily responsible for providing services to the child has made active
22 efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that
23 those efforts have proved unsuccessful; a statement as to whether the out-of-home
24 care placement recommended is in compliance with the order of placement
25 preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c); and, if the

1 recommended placement is not in compliance with that order, specific information
2 showing good cause for departing from that order.

Note: The DHFS draft requires the court report to set forth any response by the Indian tribe regarding the interest of the tribal court in exercising jurisdiction. Under 25 USC 1911 (b), however, the remedy for a tribe that wishes to exercise jurisdiction is not to express interest to the agency. Rather, the tribe's remedy is to petition for transfer of jurisdiction. Accordingly, this draft does not require a court report to set forth the tribe's interest in exercising jurisdiction.

3 **SECTION 82.** 48.335 (3j) of the statutes is created to read:

4 **48.335 (3j)** At hearings under this section involving an Indian child, if the
5 agency, as defined in s. 48.38 (1) (a), is recommending placement of the Indian child
6 in a foster home, treatment foster home, group home, or residential care center for
7 children and youth or in the home of a relative other than a parent, the agency shall
8 present as evidence specific information showing all of the following:

9 (a) That continued custody of the Indian child by the parent or Indian custodian
10 is likely to result in serious emotional or physical damage to the Indian child under
11 s. 48.028 (4) (d) 1.

12 (b) That the county department, the department in a county having a
13 population of 500,000 or more, or the agency primarily responsible for providing
14 services to the Indian child has made active efforts under s. 48.028 (4) (d) 2. to
15 prevent the breakup of the Indian family and that those efforts have proved
16 unsuccessful.

17 (c) That the placement recommended is in compliance with the order of
18 placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) or, if that
19 placement is not in compliance with that order, good cause for departing from that
20 order.

21 **SECTION 83.** 48.345 (3) (intro.) of the statutes is amended to read:

1 48.345 (3) (intro.) Designate Subject to sub. (3m), designate one of the following
2 as the placement for the child:

3 **SECTION 84.** 48.345 (3m) of the statutes is created to read:

4 48.345 (3m) (a) Subject to s. 48.028 (7) (c), if the child is an Indian child who
5 is being placed in an out-of-home care placement, as defined in s. 48.028 (2) (e),
6 designate one of the placements listed in s. 48.028 (7) (b) 1. to 4. as the placement for
7 the Indian child, in the order of preference listed.

8 **SECTION 85.** 48.355 (2) (b) 6v. of the statutes is created to read:

9 48.355 (2) (b) 6v. If the child is an Indian child who is placed outside the home,
10 a finding supported by clear and convincing evidence, including the testimony of one
11 or more qualified expert witnesses, that continued custody of the Indian child by the
12 parent or Indian custodian is likely to result in serious emotional or physical damage
13 to the child under s. 48.028 (4) (d) 1. and a finding supported by clear and convincing
14 evidence as to whether the county department, department in a county having a
15 population of 500,000 or more, or agency primarily responsible for providing services
16 under a court order has made active efforts under s. 48.028 (4) (d) 2. to prevent the
17 breakup of the Indian family and that those efforts have proved unsuccessful.

18 **SECTION 86.** 48.355 (2) (d) of the statutes is amended to read:

19 48.355 (2) (d) The court shall provide a copy of a dispositional order relating
20 to a child in need of protection or services to the child's parent, guardian, legal
21 custodian, or trustee, to the child through the child's counsel or guardian ad litem
22 and, to the child's court-appointed special advocate, and, if the child is an Indian
23 child, to the Indian child's Indian custodian and tribe. The court shall provide a copy
24 of a dispositional order relating to an unborn child in need of protection or services
25 to the expectant mother, to the unborn child through the unborn child's guardian ad

The court order shall contain a finding that those active efforts have been made notwithstanding that a circumstance specified in sub. (2d) (b) 1. to 5. applies.

1 ~~litem and, if the expectant mother is a child, to her, to the parent, guardian, legal~~
2 ~~custodian, or trustee of a child expectant mother, and, if the expectant mother is an~~
3 ~~Indian child or if the unborn child, when born may be an Indian child, to the~~
4 ~~expectant mother's Indian custodian and tribe or to the Indian tribe in which the~~
5 ~~unborn child may be eligible for membership when born.~~

6 **SECTION 87.** 48.355 (2d) (b) 5. of the statutes is amended to read:

7 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have
8 relinquished custody of the child under s. 48.195 (1) (a) when the child was 72 hours
9 old or younger, as evidenced by a final order of a court of competent jurisdiction
10 making that finding.

11 **SECTION 88.** 48.355 (2d) (c) 1. of the statutes is renumbered 48.355 (2d) (c) and
12 amended to read:

13 48.355 (2d) (c) If the court finds that any of the circumstances ~~specified in~~
14 ~~under~~ par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing
15 ~~under s. 48.38 (4m)~~ within 30 days after the date of that finding to determine the
16 permanency plan for the child. ~~If a hearing is held under this subdivision, the agency~~
17 ~~responsible for preparing the permanency plan shall file the permanency plan with~~
18 ~~the court not less than 5 days before the date of the hearing.~~

19 **SECTION 89.** 48.355 (2d) (c) 2. of the statutes is repealed.

20 **SECTION 90.** 48.355 (2d) (c) 3. of the statutes is repealed.

21 **SECTION 91.** 48.357 (1) (am) 1. of the statutes is amended to read:

22 48.357 (1) (am) 1. If the proposed change in placement involves any change in
23 placement other than a change in placement specified in par. (c), the person or agency
24 primarily responsible for implementing the dispositional order, the district attorney,
25 or the corporation counsel shall cause written notice of the proposed change in

1 placement to be sent to the child, the parent, guardian, and legal custodian of the
2 child, any foster parent, treatment foster parent, or other physical custodian
3 described in s. 48.62 (2) of the child, the child's court-appointed special advocate,
4 and, if the child is an Indian child, the Indian child's Indian custodian and tribe. If
5 the child is the expectant mother of an unborn child under s. 48.133, written notice
6 shall also be sent to the unborn child by the unborn child's guardian ad litem. If the
7 change in placement involves an adult expectant mother is an adult of an unborn
8 child under s. 48.133, written notice shall be sent to the adult expectant mother and
9 the unborn child by the unborn child's guardian ad litem. The notice shall contain
10 the name and address of the new placement, the reasons for the change in placement,
11 a statement describing why the new placement is preferable to the present
12 placement, and a statement of how the new placement satisfies objectives of the
13 treatment plan ordered by the court.

14 **SECTION 92.** 48.357 (1) (am) 1g. of the statutes is created to read:

15 48.357 (1) (am) 1g. If the child is an Indian child, a notice under subd. 1. shall
16 also contain specific information showing that continued custody of the Indian child
17 by the parent or Indian custodian is likely to result in serious emotional or physical
18 damage to the child under s. 48.028 (4) (d) 1., specific information showing that the
19 agency primarily responsible for implementing the dispositional order has made
20 active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family
21 and that those efforts have proved unsuccessful, a statement as to whether the new
22 placement is in compliance with the order of placement preference under s. 48.028
23 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance
24 with that order, specific information showing good cause for departing from that
25 order.

1 **SECTION 93.** 48.357 (1) (am) 1m. of the statutes is created to read:

2 48.357 (1) (am) 1m. If the child is an Indian child, notice under subd. 1. to the
3 Indian child's parent, Indian custodian, and tribe shall be provided in the manner
4 specified in s. 48.028 (4) (a). No hearing on the request may be held until at least 10
5 days after receipt of the notice by the Indian child's parent, Indian custodian, and
6 tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court
7 shall grant a continuance of up to 20 additional days to enable the requester to
8 prepare for the hearing.

9 **SECTION 94.** 48.357 (1) (am) 2. of the statutes is renumbered 48.357 (1) (am)
10 2. (intro.) and amended to read:

11 48.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of
12 a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed special
13 advocate, may obtain a hearing on the matter by filing an objection with the court
14 within 10 days after receipt of the notice. Placements Except as provided in subd.
15 2m., placements may not be changed until 10 days after that notice is sent to the
16 court unless written waivers of objection are signed as follows:

17 a. By the parent, guardian, or legal custodian and, or Indian custodian, the
18 child, if 12 years of age or over, or and the child's tribe, if the child is an Indian child.

19 b. By the child expectant mother, if 12 years of age or over, her parent, guardian,
20 or legal custodian and, or Indian custodian, the unborn child by the unborn child's
21 guardian ad litem, or and the child expectant mother's tribe, if she is an Indian child.

22 c. By the adult expectant mother and the unborn child by the unborn child's
23 guardian ad litem, sign written waivers of objection, except that changes.

24 2m. Changes in placement that were authorized in the dispositional order may
25 be made immediately if notice is given as required under subd. 1. In addition, a

1 hearing is not required for placement changes authorized in the dispositional order
2 except when an objection filed by a person who received notice alleges that new
3 information is available that affects the advisability of the court's dispositional order.

4 **SECTION 95.** 48.357 (1) (am) 3. of the statutes is amended to read:

5 48.357 (1) (am) 3. If the court changes the child's placement from a placement
6 outside the home to another placement outside the home, the change in placement
7 order shall contain one of the statements specified in under sub. (2v) (a) 2. If the court
8 changes the placement of an Indian child from a placement outside the home to
9 another placement outside the home, the change in placement order shall, in
10 addition, comply with the order of placement preference under s. 48.028 (7) (b) or, if
11 applicable, s. 48.028 (7) (c) and contain the findings under sub. (2v) (a) 4.

NOTE: The DHFS draft amends s. 48.355 (2m) to require the active efforts and serious harm findings to be made when changes in transitional placements are made. Section 48.355 (2m), however, provides that the procedures of s. 48.357 govern transitions. Accordingly, the amendments made to s. 48.357 by this draft will cover those findings and no amendment to s. 48.355 (2m) is necessary.

12 **SECTION 96.** 48.357 (1) (c) 1m. of the statutes is created to read:

13 48.357 (1) (c) 1m. If the child is an Indian child, a request under subd. 1. shall
14 also contain specific information showing that continued custody of the Indian child
15 by the parent or Indian custodian is likely to result in serious emotional or physical
16 damage to the child under s. 48.028 (4) (d) 1., specific information showing that the
17 agency primarily responsible for implementing the dispositional order has made
18 active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family
19 and that those efforts have proved unsuccessful, a statement as to whether the new
20 placement is in compliance with the order of placement preference under s. 48.028
21 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance

1 with that order, specific information showing good cause for departing from that
2 order.

3 **SECTION 97.** 48.357 (1) (c) 2. of the statutes is amended to read:

4 48.357 (1) (c) 2. The court shall hold a hearing prior to ordering any change in
5 placement requested under subd. 1. Not less than 3 days prior to the hearing, the
6 court shall provide notice of the hearing, together with a copy of the request for the
7 change in placement, to the child, the parent, guardian, and legal custodian of the
8 child, the child's court-appointed special advocate, and all parties that are bound by
9 the dispositional order, and if the child is an Indian child, the Indian child's Indian
10 custodian and tribe. If all parties consent, the court may proceed immediately with
11 the hearing.

12 **SECTION 98.** 48.357 (1) (c) 2m. of the statutes is created to read:

13 48.357 (1) (c) 2m. If the child is an Indian child, notice under subd. 2. to the
14 Indian child's parent, Indian custodian, and tribe shall be provided in the manner
15 specified in s. 48.028 (4) (a). No hearing on the request may be held until at least 10
16 days after receipt of the notice by the Indian child's parent, Indian custodian, and
17 tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court
18 shall grant a continuance of up to 20 additional days to enable the requester to
19 prepare for the hearing.

20 **SECTION 99.** 48.357 (1) (c) 3. of the statutes is amended to read:

21 48.357 (1) (c) 3. If the court changes the child's placement from a placement in
22 the child's home to a placement outside the child's home, the change in placement
23 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., one of the
24 statements ~~specified in~~ under sub. (2v) (a) 2., and, if in addition the court finds that
25 any of the circumstances ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies with

1 respect to a parent, the determination ~~specified in~~ under sub. (2v) (a) 3. If the court
2 changes the placement of an Indian child from a placement in the child's home to a
3 placement outside the child's home, the change in placement order shall, in addition,
4 comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable,
5 s. 48.028 (7) (c) and contain the findings under sub. (2v) (a) 4.

6 **SECTION 100.** 48.357 (2m) (a) of the statutes is amended to read:

7 48.357 (2m) (a) The child, the parent, guardian, ~~or~~ legal custodian, or Indian
8 custodian of the child, the expectant mother, the unborn child by the unborn child's
9 guardian ad litem, or any person or agency primarily bound by the dispositional
10 order, other than the person or agency responsible for implementing the order, may
11 request a change in placement under this paragraph. The request shall contain the
12 name and address of the new placement requested and shall state what new
13 information is available that affects the advisability of the current placement. If the
14 proposed change in placement would change the placement of a child placed in the
15 child's home to a placement outside the child's home, the request shall also contain
16 specific information showing that continued placement of the child in the home
17 would be contrary to the welfare of the child and, unless any of the circumstances
18 ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that
19 the agency primarily responsible for implementing the dispositional order has made
20 reasonable efforts to prevent the removal of the child from the home, while assuring
21 that the child's health and safety are the paramount concerns. The request shall be
22 submitted to the court. ~~In addition, the~~ The court may also propose a change in
23 placement on its own motion.

24 **SECTION 101.** 48.357 (2m) (am) of the statutes is created to read:

1 48.357 (2m) (am) If the proposed change of placement would change the
2 placement of an Indian child placed in the child's home to a placement outside the
3 child's home, a request under par. (a) shall also contain specific information showing
4 that continued custody of the Indian child by the parent or Indian custodian is likely
5 to result in serious emotional or physical damage to the child under s. 48.028 (4) (d)
6 1., specific information showing that the agency primarily responsible for
7 implementing the dispositional order has made active efforts under s. 48.028 (4) (d)
8 2. to prevent the breakup of the Indian family and that those efforts have proved
9 unsuccessful, a statement as to whether the new placement is in compliance with the
10 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c)
11 and, if the new placement is not in compliance with that order, specific information
12 showing good cause for departing from that order.

13 **SECTION 102.** 48.357 (2m) (b) of the statutes is amended to read:

14 48.357 (2m) (b) The court shall hold a hearing ~~on the matter~~ prior to ordering
15 any change in placement requested or proposed under par. (a) if the request states
16 that new information is available that affects the advisability of the current
17 placement, ~~unless. A hearing is not required if the requested or proposed change in~~
18 ~~placement involves any change in placement other than~~ does not involve a change
19 in placement of a child placed in the child's home to a placement outside the child's
20 home ~~and,~~ written waivers of objection to the proposed change in placement are
21 signed by all persons entitled to receive notice under ~~sub. (1) (am) 1.~~ this paragraph,
22 other than a court-appointed special advocate, and the court approves. If a hearing
23 is scheduled, not less than 3 days before the hearing the court shall notify the child,
24 the parent, guardian, and legal custodian of the child, any foster parent, treatment
25 foster parent, or other physical custodian described in s. 48.62 (2) of the child, the

1 child's court-appointed special advocate, all parties who are bound by the
2 dispositional order, and, if the child is an Indian child, the Indian child's Indian
3 custodian and tribe. If the child is the expectant mother of an unborn child under
4 s. 48.133, the court shall also notify the unborn child by the unborn child's guardian
5 ad litem, ~~or~~. If the change in placement involves an adult expectant mother of an
6 unborn child under s. 48.133, the court shall notify the adult expectant mother, the
7 unborn child by the unborn child's guardian ad litem, and all parties who are bound
8 by the dispositional order, at least 3 days prior to the hearing. A copy of the request
9 or proposal for the change in placement shall be attached to the notice. If all of the
10 parties consent, the court may proceed immediately with the hearing.

11 **SECTION 103.** 48.357 (2m) (bm) of the statutes is created to read:

12 48.357 (2m) (bm) If the proposed change in placement would change the
13 placement of an Indian child placed in the child's home to a placement outside the
14 child's home, notice under par. (b) to the Indian child's parent, Indian custodian, and
15 tribe shall be provided in the manner specified in s. 48.028 (4) (a). No hearing on the
16 request or proposal may be held until at least 10 days after receipt of the notice by
17 the Indian child's parent, Indian custodian, and tribe. On request of the Indian
18 child's parent, Indian custodian, or tribe, the court shall grant a continuance of up
19 to 20 additional days to enable the requester to prepare for the hearing.

20 **SECTION 104.** 48.357 (2m) (c) of the statutes is amended to read:

21 48.357 (2m) (c) If the court changes the child's placement from a placement in
22 the child's home to a placement outside the child's home, the change in placement
23 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., one of the
24 statements ~~specified in~~ under sub. (2v) (a) 2., and, if in addition the court finds that
25 any of the circumstances ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies with

1 respect to a parent, the determination ~~specified in~~ under sub. (2v) (a) 3. If the court
2 changes the placement of an Indian child from a placement in the child's home to a
3 placement outside the child's home, the change in placement order shall, in addition,
4 comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable,
5 s. 48.028 (7) (c) and contain the findings under sub. (2v) (a) 4.

6 **SECTION 105.** 48.357 (2v) (a) 4. of the statutes is created to read:

7 48.357 (2v) (a) 4. If the change in placement order changes an Indian child's
8 placement from a placement in the Indian child's home to a placement outside the
9 Indian child's home, a finding supported by clear and convincing evidence, including
10 the testimony of one or more qualified expert witnesses, that continued custody of
11 the Indian child by the parent or Indian custodian is likely to result in serious
12 emotional or physical damage to the child under s. 48.028 (4) (d) 1. and a finding
13 supported by clear and convincing evidence that the agency primarily responsible for
14 implementing the dispositional order has made active efforts under s. 48.028 (4) (d)
15 2. to prevent the breakup of the Indian family and that those efforts have proved
16 unsuccessful.

17 **SECTION 106.** 48.357 (2v) (c) 1. of the statutes is renumbered 48.357 (2v) (c) and
18 amended to read:

19 48.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances
20 ~~specified in~~ under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court
21 shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding
22 to determine the permanency plan for the child. ~~If a hearing is held under this~~
23 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
24 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

25 **SECTION 107.** 48.357 (2v) (c) 2. of the statutes is repealed.

1 **SECTION 108.** 48.357 (2v) (c) 3. of the statutes is repealed.

2 **SECTION 109.** 48.363 (1) (a) of the statutes is amended to read:

3 48.363 (1) (a) A child, the child's parent, guardian ~~or~~, legal custodian, or Indian
4 custodian, an expectant mother, an unborn child by the unborn child's guardian ad
5 litem, any person or agency bound by a dispositional order, or the district attorney
6 or corporation counsel in the county in which the dispositional order was entered
7 may request a revision in the order that does not involve a change in placement,
8 including a revision with respect to the amount of child support to be paid by a
9 parent, ~~or the~~. The court may ~~on its own motion~~ also propose such a revision. The
10 request or court proposal shall set forth in detail the nature of the proposed revision
11 and what new information is available that affects the advisability of the court's
12 disposition. The request or court proposal shall be submitted to the court. The court
13 shall hold a hearing on the matter prior to any revision of the dispositional order if
14 the request or court proposal indicates that new information is available which
15 affects the advisability of the court's dispositional order, unless written waivers of
16 objections to the revision are signed by all parties entitled to receive notice and the
17 court approves.

18 **SECTION 110.** 48.363 (1) (b) of the statutes is amended to read:

19 48.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
20 shall notify the child, the child's parent, guardian, and legal custodian, all parties
21 bound by the dispositional order, the child's foster parent, treatment foster parent,
22 or other physical custodian described in s. 48.62 (2), the child's court-appointed
23 special advocate, the district attorney or corporation counsel in the county in which
24 the dispositional order was entered, and, if the child is an Indian child, the Indian
25 child's Indian custodian and tribe. If the child is the expectant mother of an unborn

1 child under s. 48.133, the court shall also notify the unborn child by the unborn
2 child's guardian ad litem; ~~or. If the proceeding involves an adult expectant mother~~
3 of an unborn child under s. 48.133, the court shall notify the adult expectant mother,
4 the unborn child through the unborn child's guardian ad litem, all parties bound by
5 the dispositional order, and the district attorney or corporation counsel in the county
6 in which the dispositional order was entered, at least 3 days prior to the hearing. A
7 copy of the request or proposal shall be attached to the notice. If all parties consent,
8 the court may proceed immediately with the hearing. No revision may extend the
9 effective period of the original order.

10 **SECTION 111.** 48.365 (1m) of the statutes is amended to read:

11 48.365 (1m) The parent, child, guardian, legal custodian, Indian custodian,
12 expectant mother, unborn child by the unborn child's guardian ad litem, any person
13 or agency bound by the dispositional order, the district attorney or corporation
14 counsel in the county in which the dispositional order was entered, ~~or the court on~~
15 its own motion, may request an extension of an order under s. 48.355 including an
16 order under s. 48.355 that was entered before the child was born. The request shall
17 be submitted to the court ~~which~~ that entered the order. ~~No An~~ order under s. 48.355
18 may be extended ~~except~~ only as as provided in this section.

19 **SECTION 112.** 48.365 (2) of the statutes is amended to read:

20 48.365 (2) No order may be extended without a hearing. The court shall ~~notify~~
21 provide notice of the time and place of the hearing to the child, the child's parent,
22 guardian, and legal custodian, all the parties present at the original hearing, the
23 child's foster parent, treatment foster parent or other physical custodian described
24 in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or
25 corporation counsel in the county in which the dispositional order was entered and,

1 if the child is an Indian child, the Indian child's Indian custodian and tribe. If the
2 child is an expectant mother of an unborn child under s. 48.133, the court shall also
3 notify the unborn child by the unborn child's guardian ad litem, or. If the extension
4 hearing involves an adult expectant mother of an unborn child under s. 48.133, the
5 court shall notify the adult expectant mother, the unborn child through the unborn
6 child's guardian ad litem, all the parties present at the original hearing, and the
7 district attorney or corporation counsel in the county in which the dispositional order
8 was entered, of the time and place of the hearing.

9 **SECTION 113.** 48.365 (2g) (b) 4. of the statutes is created to read:

10 48.365 (2g) (b) 4. If the child is an Indian child who is placed outside the home,
11 specific information showing that active efforts under s. 48.028 (4) (d) 2. have been
12 made to prevent the breakup of the Indian family and that those efforts have proved
13 unsuccessful.

14 **SECTION 114.** 48.365 (2m) (a) 1. of the statutes is amended to read:

15 48.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
16 extension. If the child is placed outside of his or her home, the person or agency
17 primarily responsible for providing services to the child shall present as evidence
18 specific information showing that the person or agency has made reasonable efforts
19 to achieve the goal of the child's permanency plan, unless return of the child to the
20 home is the goal of the permanency plan and any of the circumstances specified in
21 under s. 48.355 (2d) (b) 1. to 5. applies. If an Indian child is placed outside the home,
22 the person or agency primarily responsible for providing services to the Indian child
23 shall also present as evidence specific information showing that the person or agency
24 has made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian
25 family and that those efforts have proved unsuccessful.

1 1m. The judge shall make findings of fact and conclusions of law based on the
2 evidence. The findings of fact shall include a finding as to whether reasonable efforts
3 were made by the agency primarily responsible for providing services to the child to
4 achieve the goal of the child's permanency plan, unless return of the child to the home
5 is the goal of the permanency plan and the judge finds that any of the circumstances
6 ~~specified in under~~ s. 48.355 (2d) (b) 1. to 5. applies. If the child is an Indian child who
7 is placed outside the home, the findings of fact shall also include a finding as to
8 whether active efforts under s. 48.028 (4) (d) 2. were made to prevent the breakup
9 of the Indian family and as to whether those efforts have proved unsuccessful. An
10 order shall be issued under s. 48.355.

11 **SECTION 115.** 48.365 (2m) (a) 3. of the statutes is amended to read:

12 48.365 **(2m)** (a) 3. The judge shall make the findings ~~specified in under~~ subd.
13 ~~1.~~ 1m. relating to reasonable efforts to achieve the goal of the child's permanency plan
14 and the findings ~~specified in under~~ subd. 2. on a case-by-case basis based on
15 circumstances specific to the child and shall document or reference the specific
16 information on which those findings are based in the order issued under s. 48.355.
17 An order that merely references subd. ~~1.~~ 1m. or 2. without documenting or
18 referencing that specific information in the order or an amended order that
19 retroactively corrects an earlier order that does not comply with this subdivision is
20 not sufficient to comply with this subdivision.

21 **SECTION 116.** 48.365 (2m) (ad) 1. of the statutes is renumbered 48.365 (2m) (ad)
22 and amended to read:

23 48.365 **(2m)** (ad) If the judge finds that any of the circumstances ~~specified in~~
24 under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold
25 a hearing under s. 48.38 (4m) within 30 days after the date of that finding to

1 determine the permanency plan for the child. ~~If a hearing is held under this~~
2 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
3 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

4 **SECTION 117.** 48.365 (2m) (ad) 2. of the statutes is repealed.

5 **SECTION 118.** 48.365 (2m) (ag) of the statutes is amended to read:

6 48.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,
7 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
8 ~~par. (ad) 2. or sub. (2)~~ an opportunity to be heard at the hearing by permitting the
9 foster parent, treatment foster parent, or other physical custodian to make a written
10 or oral statement during the hearing, or to submit a written statement prior to the
11 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,
12 or other physical custodian ~~described in s. 48.62 (2)~~ who receives notice of a hearing
13 under ~~par. (ad) 2. or sub. (2)~~ and an opportunity to be heard under this paragraph
14 does not become a party to the proceeding on which the hearing is held solely on the
15 basis of receiving that notice and having the opportunity to be heard.

16 **SECTION 119.** 48.38 (4) (i) of the statutes is created to read:

17 48.38 (4) (i) If the child is an Indian child, all of the following:

- 18 1. The name, address, and telephone number of the Indian child's Indian
19 custodian and tribe.
- 20 2. A description of the remedial services and rehabilitation programs offered
21 under s. 48.028 (4) (d) 2. in an effort to prevent the breakup of the Indian family.
- 22 3. A statement as to whether the Indian child's placement is in compliance with
23 the order of placement preference specified in s. 48.028 (7) (b) or, if applicable, s.
24 48.028 (7) (c) and, if the placement is not in compliance with that order, an
25 explanation for the departure from that order.

1 **SECTION 120.** 48.38 (4m) of the statutes is created to read:

2 **48.38 (4m) PERMANENCY PLAN DETERMINATION HEARING.** (a) If in a proceeding
3 under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the
4 circumstances under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the
5 court shall hold a hearing within 30 days after the date of that finding to determine
6 the permanency plan for the child. If a hearing is held under this paragraph, the
7 agency responsible for preparing the permanency plan shall file the permanency
8 plan with the court not less than 5 days before the date of the hearing.

9 (b) At least 10 days before the date of the hearing the court shall notify the child,
10 any parent, guardian, and legal custodian of the child, and any foster parent,
11 treatment foster parent, or other physical custodian described in s. 48.62 (2) of the
12 child of the time, place, and purpose of the hearing.

13 (c) If the court knows or has reason to know that the child is an Indian child,
14 notice under par. (b) to the Indian child's parent shall be provided in the manner
15 specified in s. 48.028 (4) (a). In like manner, the court shall also notify the Indian
16 child's Indian custodian and tribe. No hearing may be held under par. (a) until at
17 least 10 days after receipt of the notice by the Indian child's parent, Indian custodian,
18 and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the
19 court shall grant a continuance of up to 20 additional days to enable the requester
20 to prepare for the hearing.

21 (d) The court shall give a foster parent, treatment foster parent, or other
22 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)
23 an opportunity to be heard at the hearing by permitting the foster parent, treatment
24 foster parent, or other physical custodian to make a written or oral statement during
25 the hearing, or to submit a written statement prior to the hearing, relevant to the

1 issues to be determined at the hearing. The foster parent, treatment foster parent,
2 or other physical custodian does not become a party to the proceeding on which the
3 hearing is held solely on the basis of receiving that notice and having the opportunity
4 to be heard.

5 **SECTION 121.** 48.38 (5) (b) of the statutes is amended to read:

6 48.38 (5) (b) The court or the agency shall notify ~~the parents of the child, the~~
7 ~~child, if he or she is 12 years of age or older, and; the child's parent, guardian, and~~
8 ~~legal custodian;~~ the child's foster parent, the child's treatment foster parent, the
9 operator of the facility in which the child is living, or the relative with whom the child
10 is living; and, if the child is an Indian child, the Indian child's Indian custodian and
11 tribe of the date, time, and place of the review, of the issues to be determined as part
12 of the review, and of the fact that they may have an opportunity to be heard at the
13 review by submitting written comments not less than 10 working days before the
14 review or by participating at the review. The court or agency shall notify the person
15 representing the interests of the public, the child's counsel, the child's guardian ad
16 litem, and the child's court-appointed special advocate of the date of the review, of
17 the issues to be determined as part of the review, and of the fact that they may submit
18 written comments not less than 10 working days before the review. The notices
19 under this paragraph shall be provided in writing not less than 30 days before the
20 review and copies of the notices shall be filed in the child's case record.

21 **SECTION 122.** 48.38 (5) (bm) of the statutes is created to read:

22 48.38 (5) (bm) If the child is an Indian child, notice under par. (b) to the Indian
23 child's parent, Indian custodian, and tribe shall be provided in the manner specified
24 in s. 48.028 (4) (a). No review may be held until at least 10 days after receipt of the
25 notice by the Indian child's parent, Indian custodian, and tribe. On request of the

1 Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance
2 of up to 20 additional days to enable the requester to prepare for the review.

3 **SECTION 123.** 48.38 (5) (c) 8. of the statutes is created to read:

4 48.38 (5) (c) 8. If the child is an Indian child, whether active efforts under s.
5 48.028 (4) (d) 2. were made by the agency to prevent the breakup of the Indian family,
6 whether those efforts have proved unsuccessful, whether the Indian child's
7 placement is in compliance with the order of placement preference under s. 48.028
8 (7) (b) or, if applicable, s. 48.028 (7) (c), and, if the placement is not in compliance with
9 that order, whether there is good cause for departure from that order.

10 **SECTION 124.** 48.38 (5) (d) of the statutes is amended to read:

11 48.38 (5) (d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the
12 permanency plan shall, at least 5 days before a review by a review panel, provide to
13 each person appointed to the review panel, the child's parent, guardian, and legal
14 custodian, the person representing the interests of the public, the child's counsel, the
15 child's guardian ad litem ~~and~~, the child's court-appointed special advocate, and, if
16 the child is an Indian child, the Indian child's Indian custodian and tribe a copy of
17 the permanency plan and any written comments submitted under par. (b).
18 Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person
19 representing the interests of the public, the child's counsel, the child's guardian ad
20 litem ~~and~~, the child's court-appointed special advocate, and, if the child is an Indian
21 child, the Indian child's Indian custodian and tribe may have access to any other
22 records concerning the child for the purpose of participating in the review. A person
23 permitted access to a child's records under this paragraph may not disclose any
24 information from the records to any other person.

25 **SECTION 125.** 48.38 (5) (e) of the statutes is amended to read:

1 48.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
2 the determinations under par. (c) and shall provide a copy to the court that entered
3 the order; the child or the child's counsel or guardian ad litem; the person
4 representing the interests of the public; the child's parent or, guardian, or legal
5 custodian; the child's court-appointed special advocate ~~and~~; the child's foster parent,
6 the child's treatment foster parent, or the operator of the facility where the child is
7 living; and, if the child is an Indian child, the Indian child's Indian custodian and
8 tribe.

9 **SECTION 126.** 48.38 (5m) (b) of the statutes is amended to read:

10 48.38 (5m) (b) Not less than 30 days before the date of the hearing, the court
11 shall notify the child; the child's parent, guardian, and legal custodian; the child's
12 foster parent or treatment foster parent, the operator of the facility in which the child
13 is living, or the relative with whom the child is living; the child's counsel, the child's
14 guardian ad litem, and the child's court-appointed special advocate; the agency that
15 prepared the permanency plan; ~~and~~ the person representing the interests of the
16 public; and, if the child is an Indian child, the Indian child's Indian custodian and
17 tribe of the date, time, and place of the hearing.

18 **SECTION 127.** 48.38 (5m) (bm) of the statutes is created to read:

19 48.38 (5m) (bm) If the child is an Indian child, notice under par. (b) to the Indian
20 child's parent, Indian custodian, and tribe shall be provided in the manner specified
21 in s. 48.028 (4) (a). No hearing under par. (a) may be held until at least 10 days after
22 receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On
23 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant
24 a continuance of up to 20 additional days to enable the requester to prepare for the
25 hearing.

~~NOTE: Section 48.38 (5m) (c), as affected by the DHFS draft, provides that an Indian custodian and tribe do not become parties to the proceeding. Actually, 25 USC 1911 (c) grants the Indian custodian and tribe the right to intervene at any point in a proceeding involving an Indian child.~~

SECTION 128. 48.38 (5m) (d) of the statutes is amended to read:

48.38 (5m) (d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) to the court, to the child's parent, guardian, and legal custodian, to the person representing the interests of the public, to the child's counsel or guardian ad litem, and to the child's court-appointed special advocate, and, if the child is an Indian child, to the Indian child's Indian custodian and tribe. Notwithstanding s. 48.78 (2) (a), the person representing the interests of the public, the child's counsel or guardian ad litem, and the child's court-appointed special advocate, and, if the child is an Indian child, the Indian child's Indian custodian and tribe may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

SECTION 129. 48.38 (5m) (e) of the statutes is amended to read:

48.38 (5m) (e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's court-appointed special advocate; the agency that prepared the permanency plan; and the person representing the interests of the public; and, if the child is an Indian child, the Indian child's Indian custodian and

1 tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case
2 basis based on circumstances specific to the child and shall document or reference
3 the specific information on which those findings are based in the findings of fact and
4 conclusions of law prepared under this paragraph. Findings of fact and conclusions
5 of law that merely reference sub. (5) (c) 7. without documenting or referencing that
6 specific information in the findings of fact and conclusions of law or amended
7 findings of fact and conclusions of law that retroactively correct earlier findings of
8 fact and conclusions of law that do not comply with this paragraph are not sufficient
9 to comply with this paragraph.

10 ~~SECTION 130. 48.38 (6) (cm) of the statutes is created to read:~~

11 ~~48.38 (6) (cm) Standards for active efforts under s. 48.028 (4) (d) 2. to prevent~~
12 ~~the breakup of an Indian child's family.~~

****NOTE: Under s. 227.11 (2), DHFS has the inherent authority to promulgate
rules interpreting the statutes administered by DHFS. Accordingly, we need to mention
rule-making only if you want the legislature to require DHFS to promulgate rules.

13 **SECTION 131.** 48.41 (2) (e) of the statutes is created to read:

14 48.41 (2) (e) In the case of an Indian child, the consent is given as provided in
15 s. 48.028 (5) (b).

16 **SECTION 132.** 48.415 (1m) of the statutes is amended to read:

17 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
18 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
19 parent has relinquished custody of the child under s. 48.195 (1) (a) when the child
20 was 72 hours old or younger.

21 **SECTION 133.** 48.415 (2) (a) 2. a. of the statutes is amended to read:

22 48.415 (2) (a) 2. a. That the agency responsible for the care of the child and the
23 family or of the unborn child and expectant mother has made a reasonable effort to

1 provide the services ordered by the court. In this subdivision, “reasonable effort”
2 means an earnest and conscientious effort to take good faith steps to provide the
3 services ordered by the court ~~which~~ that takes into consideration the characteristics
4 of the parent or child or of the expectant mother or child, the level of cooperation of
5 the parent or expectant mother, and other relevant circumstances of the case.

6 **SECTION 134.** 48.415 (2) (a) 2. b. of the statutes is amended to read:

7 48.415 (2) (a) 2. b. ~~That~~ In the case of an Indian child, that the agency
8 responsible for the care of the child and the family or of the unborn child and
9 expectant mother has made ~~a reasonable effort~~ active efforts under s. 48.028 (4) (e)
10 2. to provide the services ordered by the court.

11 **SECTION 135.** 48.417 (2) (cm) of the statutes is created to read:

12 48.417 (2) (cm) In the case of an Indian child, the agency primarily responsible
13 for providing services to the Indian child and the family under a court order, if
14 required under s. 48.355 (2) (b) 6v. to make active efforts under s. 48.028 (4) (d) 2. to
15 prevent the breakup of the Indian family, has not provided to the Indian child’s
16 family, consistent with the time period in the child’s permanency plan, the services
17 necessary to prevent the breakup of the Indian family.

18 **SECTION 136.** 48.42 (1) (d) of the statutes is amended to read:

19 48.42 (1) (d) A statement of whether the child may be subject to the federal
20 ~~Indian child welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, and, if the child may
21 be subject to that act, the names of the child’s Indian custodian, if any, and tribe, if
22 known.

23 **SECTION 137.** 48.42 (1) (e) of the statutes is created to read:

24 48.42 (1) (e) If the child is an Indian child, reliable and credible information
25 showing that continued custody of the child by the child’s parent or Indian custodian

1 is likely to result in serious emotional or physical damage to the child under s. 48.028
2 (4) (e) 1. and reliable and credible information showing that the agency has made
3 active efforts under s. 48.028 (4) (e) 2. to prevent the breakup of the Indian family
4 and that those efforts have proved unsuccessful.

5 **SECTION 138.** 48.42 (2) (c) of the statutes is amended to read:

6 48.42 (2) (c) The guardian, guardian ad litem ~~and~~, legal custodian, and Indian
7 custodian of the child.

8 **SECTION 139.** 48.42 (2g) (ag) of the statutes is created to read:

9 48.42 (2g) (ag) If the petitioner knows or has reason to know that the child is
10 an Indian child, the petitioner shall cause the summons and petition to be served on
11 the Indian child's parent and Indian custodian in the manner specified in s. 48.028
12 (4) (a). In like manner, the petitioner shall also notify the Indian child's tribe of all
13 hearings on the petition. The first notice to an Indian child's tribe shall be written,
14 shall have a copy of the petition attached to it, and shall state the nature, location,
15 date, and time of the initial hearing. No hearing may be held on the petition until
16 at least 10 days after receipt of notice of the hearing by the Indian child's parent,
17 Indian custodian, and tribe. On request of the Indian child's parent, Indian
18 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
19 to enable the requester to prepare for the hearing.

20 **SECTION 140.** 48.42 (4) (a) of the statutes is amended to read:

21 48.42 (4) (a) *Personal service.* Except as provided in this paragraph ~~and~~, par.
22 (b), and sub. (2g) (ag), a copy of the summons and petition shall be served personally
23 upon the parties specified in sub. (2), if known, at least 7 days before the date of the
24 hearing. Service of summons is not required if the party submits to the jurisdiction

1 of the court. Service upon parties who are not natural persons and upon persons
2 under a disability shall be as prescribed in s. 801.11.

3 **SECTION 141.** 48.422 (1) of the statutes is amended to read:

4 48.422 (1) The Except as provided in s. 48.42 (2g) (ag), the hearing on the
5 petition to terminate parental rights shall be held within 30 days after the petition
6 is filed. At the hearing on the petition to terminate parental rights the court shall
7 determine whether any party wishes to contest the petition and inform the parties
8 of their rights under sub. (4) and s. 48.423.

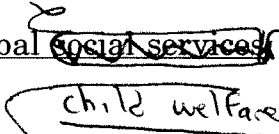
9 **SECTION 142.** 48.422 (2) of the statutes is amended to read:

10 48.422 (2) If Except as provided in s. 48.42 (2g) (ag), if the petition is contested
11 the court shall set a date for a fact-finding hearing to be held within 45 days of after
12 the hearing on the petition, unless all of the necessary parties agree to commence
13 with the hearing on the merits immediately.

14 **SECTION 143.** 48.422 (6) (a) of the statutes is amended to read:

15 48.422 (6) (a) In the case of a nonmarital child who is not adopted or whose
16 parents do not subsequently intermarry under s. 767.803 and for whom paternity
17 has not been established, or for whom a declaration of paternal interest has not been
18 filed under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42
19 (1g) (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g)
20 (b) is mailed, the court shall hear testimony concerning the paternity of the child.
21 Based on the testimony, the court shall determine whether all interested parties who
22 are known have been notified under s. 48.42 (2) and (2g) (ag). If not, the court shall
23 adjourn the hearing and order appropriate notice to be given.

24 **SECTION 144.** 48.422 (8) of the statutes is amended to read:

1 48.422 (8) If the petition for termination of parental rights is filed by an agency
2 enumerated in s. 48.069 (1) or (2), the court shall order the agency to submit file a
3 report to with the court as provided in s. 48.425 (1), except that, if the child is an
4 Indian child, the court may order the agency or request the tribal ~~social services~~
5 department of the Indian child's tribe to file that report. 

6 **SECTION 145.** 48.423 (1) of the statutes is amended to read:

7 **48.423 (1) RIGHTS TO PATERNITY DETERMINATION.** If a person appears at the
8 hearing and claims that he is the father of the child, the court shall set a date for a
9 hearing on the issue of paternity ~~or, if.~~ If the child is an Indian child or if it appears
10 to the court that the determination of paternity may result in a finding that the child
11 is an Indian child, the court shall cause notice of the hearing on the issue of paternity
12 to be provided to the Indian child's parent, Indian custodian, and tribe under s. 48.42
13 (2g) (ag), and the hearing may not be held until at least 10 days after receipt of notice
14 under s. 48.42 (2g) (ag) by the Indian child's parent, Indian custodian, and tribe. On
15 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant
16 a continuance of up to 20 additional days to enable the requester to prepare for the
17 hearing. If all parties agree, the court may immediately commence hearing
18 testimony concerning the issue of paternity. The court shall inform the person
19 claiming to be the father of the child of any right to counsel under s. 48.23. The person
20 claiming to be the father of the child must prove paternity by clear and convincing
21 evidence. A person who establishes his paternity of the child under this section may
22 further participate in the termination of parental rights proceeding only if the person
23 meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2)
24 or (b) or (bm).

25 **SECTION 146.** 48.424 (1) of the statutes is amended to read:

1 48.424 (1) The purpose of the fact-finding hearing is to determine whether
2 ~~grounds exist for the termination of parental rights in those cases where the~~
3 ~~termination in cases in which the petition~~ was contested at the hearing on the
4 petition under s. 48.422 whether grounds exist for termination of parental rights
5 and, in contested cases in which the child is an Indian child, to determine whether
6 grounds exist for termination of parental rights and whether the allegations
7 specified in s. 48.42 (1) (e) are proved.

8 **SECTION 147.** 48.424 (2) (intro.) of the statutes is amended to read:

9 48.424 (2) (intro.) The fact-finding hearing shall be conducted according to the
10 procedure specified in s. 48.31 except ~~that~~ as follows:

11 **SECTION 148.** 48.424 (2) (a) of the statutes is amended to read:

12 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

13 **SECTION 149.** 48.424 (3) of the statutes is amended to read:

14 48.424 (3) If the facts are determined by a jury, the jury may only decide
15 whether any grounds for the termination of parental rights have been ~~proven~~ proved
16 and, in the case of an Indian child, whether the allegations specified in s. 48.42 (1)
17 (e) have been proved. The court shall decide what disposition is in the best interest
18 of the child.

Note: In the DHFS draft likelihood of serious harm is listed in the standards and factors in s. 48.426 relating to disposition. It appears, however, that likelihood of serious harm would be based on the facts, i.e., present conduct predicts future behavior, and goes to the issue of unfitness, which is determined at the fact-finding, not dispositional, stage.

19 **SECTION 150.** 48.424 (4) (intro.) of the statutes is amended to read:

20 48.424 (4) (intro.) If grounds for the termination of parental rights are found
21 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
22 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
23 immediately to hear evidence and motions related to the dispositions enumerated in

s. 48.427. The Except as provided in s. 48.42 (2g) (ag), the court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if any of the following apply:

SECTION 151. 48.424 (4) (a) of the statutes is amended to read:

48.424 (4) (a) All parties to the proceeding agree; ~~or,~~

SECTION 152. 48.424 (4) (b) of the statutes is amended to read:

48.424 (4) (b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 ~~from an agency enumerated in s. 48.069 (1) or (2) and the court now directs the agency to prepare this report to be considered~~ orders an agency enumerated in s. 48.069 (1) or (2) to file that report with the court, or, in the case of an Indian child, now orders that agency or requests the tribal ^{child welfare} ~~social~~ services department of the Indian child's tribe to file such a report, before the court makes the disposition on the petition. (use twice)

SECTION 153. 48.424 (5) of the statutes is amended to read:

48.424 (5) If the court delays making a permanent disposition under sub. (4), it may transfer temporary custody of the child to an agency for placement of the child until the dispositional hearing. Placement of an Indian child under this subsection shall comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c).

SECTION 154. 48.425 (1) (intro.) of the statutes is amended to read:

48.425 (1) (intro.) ~~If the petition for the termination of parental rights is filed by an agency, or if the court orders an agency enumerated under s. 48.069 (1) or (2) to file a report under s. 48.422 (8) or 48.424 (4) (b) or requests the tribal~~ social services department of an Indian child's tribe to file such a report, the agency or tribal social

child welfare

1 services department, if that department consents, shall file a report with the court
2 which shall include:

3 **SECTION 155.** 48.425 (1) (cm) of the statutes is created to read:

4 48.425 (1) (cm) If the child is an Indian child, specific information showing that
5 continued custody of the child by the parent or Indian custodian is likely to result in
6 serious emotional or physical damage to the child under s. 48.028 (4) (e) 1. and, if the
7 Indian child has previously been adjudged to be in need of protection or services,
8 specific information showing that the agency or person responsible for providing
9 services to the Indian child and his or her family has made active efforts under s.
10 48.028 (4) (e) 2. to prevent the breakup of the Indian family and that those efforts
11 have proved unsuccessful.

12 **SECTION 156.** 48.427 (5) of the statutes is created to read:

13 48.427 (5) (cm) In placing an Indian child in a preadoptive placement following
14 a transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian
15 child in sustaining care under sub. (4), the court or an agency specified in sub. (3m)
16 (a) 1. to 4. or (am) shall comply with the order of placement preference under s. 48.028
17 (7) (b) or, if applicable, s. 48.028 (7) (c).

****NOTE: The DHPS note inquires whether any other provisions of s. 48.028 should be cited with respect to a preadoptive placement. You can if you want, but the only requirement of ICWA that is applicable to preadoptive placements is that those placements comply with the order of placement preferences under 25 USC 1915 (b) and (c).

18 **SECTION 157.** 48.427 (6) (b) 4. of the statutes is created to read:

19 48.427 (6) (b) 4. If the child is or may be an Indian child, information relating
20 to the child's membership or eligibility for membership in an Indian tribe.

21 **SECTION 158.** 48.428 (2) (a) of the statutes is amended to read:

1 48.428 (2) (a) Except as provided in par. (b), when a court places a child in
2 sustaining care after an order under s. 48.427 (4), the court shall transfer legal
3 custody of the child to the county department, the department, in a county having
4 a population of 500,000 or more, or a licensed child welfare agency, transfer
5 guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and
6 place the child in the home of a licensed foster parent, licensed treatment foster
7 parent, or kinship care relative with whom the child has resided for 6 months or
8 longer. In placing an Indian child in sustaining care, the court shall comply with the
9 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c).
10 Pursuant to such a placement, ~~this~~ that licensed foster parent, licensed treatment
11 foster parent, or kinship care relative shall be a sustaining parent with the powers
12 and duties specified in sub. (3).

13 **SECTION 159.** 48.428 (2) (b) of the statutes is amended to read:

14 48.428 (2) (b) When a court places a child in sustaining care after an order
15 under s. 48.427 (4) with a person who has been appointed as the guardian of the child
16 under s. 48.977 (2), the court may transfer legal custody of the child to the county
17 department, the department, in a county having a population of 500,000 or more, or
18 a licensed child welfare agency, transfer guardianship of the child to an agency listed
19 in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster
20 parent, licensed treatment foster parent, or kinship care relative with whom the
21 child has resided for 6 months or longer. In placing an Indian child in sustaining
22 care, the court shall comply with the order of placement preference under s. 48.028
23 (7) (b) or, if applicable, s. 48.028 (7) (c). Pursuant to such a placement, that licensed
24 foster parent, licensed treatment foster parent, or kinship care relative shall be a
25 sustaining parent with the powers and duties specified in sub. (3). If the court

1 transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4.
2 or (am), the court shall terminate the guardianship under s. 48.977.

3 **SECTION 160.** 48.43 (5) (bm) of the statutes is created to read:

4 48.43 (5) (bm) If the child is an Indian child, the court shall also provide notice
5 of the hearing under par. (b) to the Indian child's tribe in the manner specified in s.
6 48.028 (4) (a). No hearing may be held under par. (b) until at least 10 days after
7 receipt of notice of the hearing by the Indian child's tribe. On request of the Indian
8 child's tribe, the court shall grant a continuance of up to 20 additional days to enable
9 the tribe to prepare for the hearing.

10 **SECTION 161.** 48.43 (5) (c) of the statutes is amended to read:

11 48.43 (5) (c) Following the hearing, the court shall make all of the
12 determinations specified under s. 48.38 (5) (c), except the determinations relating to
13 the child's parents. The court may amend the order under sub. (1) to transfer the
14 child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1.
15 to 4. or (am) that consents to the transfer, if the court determines that the transfer
16 is in the child's best interest. If an Indian child's guardianship and custody are
17 transferred under this paragraph, the agency consenting to the transfer shall comply
18 with the order of placement preference specified in s. 48.028 (7) (b) or, if applicable,
19 s. 48.028 (7) (c) in placing the child. If an order is amended, the agency that prepared
20 the permanency plan shall revise the plan to conform to the order and shall file a copy
21 of the revised plan with the court. Each plan filed under this paragraph shall be
22 made a part of the court order.

23 **SECTION 162.** 48.43 (5m) of the statutes is amended to read:

24 48.43 (5m) Either the court or the agency that prepared the permanency plan
25 shall furnish a copy of the original plan and each revised plan to the child, if he or

1 she is 12 years of age or over, and to the child's foster parent, the child's treatment
2 foster parent, or the operator of the facility in which the child is living, and, if the
3 child is an Indian child, to the Indian child's tribe.

4 **SECTION 163.** 48.43 (6) (a) of the statutes is amended to read:

5 48.43 (6) (a) Judgments under this subchapter terminating parental rights are
6 final and are appealable under s. 808.03 (1) according to the procedure specified in
7 s. 809.107 and are subject to a petition for rehearing or a motion for relief only as
8 provided in s. 48.46 (1m) and (2) and, in the case of an Indian child, s. 48.028 (5) (c)
9 and (6). The attorney representing a person during a proceeding under this
10 subchapter shall continue representation of that person by filing a notice of intent
11 to appeal under s. 809.107 (2), unless the attorney has been previously discharged
12 during the proceeding by the person or by the trial court.

13 **SECTION 164.** 48.43 (6) (c) of the statutes is amended to read:

14 48.43 (6) (c) In Except as provided in s. 48.028 (5) (c) and (6), in no event may
15 any person, for any reason, collaterally attack a judgment terminating parental
16 rights more than one year after the date on which the time limit for filing an appeal
17 from the judgment has expired, or more than one year after the date on which all
18 appeals from the judgment, if any were filed, have been decided, whichever is later.

19 **SECTION 165.** 48.43 (7) of the statutes is amended to read:

20 48.43 (7) If the agency specified under sub. (1) (a) is the department and a
21 permanent adoptive placement is not in progress 2 years after entry of the order, the
22 department may petition the court to transfer legal custody of the child to a county
23 department, except that the department may not petition the court to transfer to a
24 county department legal custody of a child who was initially taken into custody
25 under s. 48.195 (1) (a). The court shall transfer the child's legal custody to the county

1 department specified in the petition. The department shall remain the child's
2 guardian.

3 **SECTION 166.** 48.46 (2) of the statutes is amended to read:

4 48.46 (2) A parent who has consented to the termination of his or her parental
5 rights under s. 48.41 or who did not contest the petition initiating the proceeding in
6 which his or her parental rights were terminated may move the court for relief from
7 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any
8 such motion shall be filed within 30 days after the entry of the judgment or order
9 terminating parental rights, unless the parent files a timely notice of intent to
10 pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall
11 be filed within the time permitted by s. 809.107 (5). A motion under this subsection
12 does not affect the finality or suspend the operation of the judgment or order
13 terminating parental rights. Motions under this subsection or s. 48.028 (5) (c) or (6)
14 and appeals to the court of appeals shall be the exclusive remedies for such a parent
15 to obtain a new hearing in a termination of parental rights proceeding.

16 **SECTION 167.** 48.48 (8m) of the statutes is amended to read:

17 48.48 (8m) To enter into agreements with American Indian tribes in this state
18 to implement the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC
19 1911 to 1963.

20 **SECTION 168.** 48.485 of the statutes is amended to read:

21 **48.485 Transfer of tribal Indian children to department for adoption.**

22 If the department accepts guardianship or legal custody or both from ~~an American~~
23 ~~Indian~~ a tribal court under s. 48.48 (3m), the department shall seek a permanent
24 adoptive placement for the child. If a permanent adoptive placement is not in
25 progress within 2 years after entry of the termination of parental rights order by the

1 tribal court, the department may petition the tribal court to transfer legal custody
2 or guardianship of the Indian child back to the Indian tribe, except that the
3 department may not petition the tribal court to transfer back to ~~a~~ an Indian tribe
4 legal custody or guardianship of ~~a~~ an Indian child who was initially taken into
5 custody under s. 48.195 (1) (a).

6 **SECTION 169.** 48.63 (1) of the statutes is amended to read:

7 48.63 (1) Acting under court order or voluntary agreement, the child's parent
8 ~~or~~, guardian, or Indian custodian, the department of health and family services, the
9 department of corrections, a county department, or a child welfare agency licensed
10 to place children in foster homes, treatment foster homes, or group homes may place
11 a child or negotiate or act as intermediary for the placement of a child in a foster
12 home, treatment foster home, or group home. Voluntary agreements under this
13 subsection may not be used for placements in facilities other than foster, treatment
14 foster, or group homes and may not be extended. A foster home or treatment foster
15 home placement under a voluntary agreement may not exceed 180 days from the
16 date on which the child was removed from the home under the voluntary agreement.
17 A group home placement under a voluntary agreement may not exceed 15 days from
18 the date on which the child was removed from the home under the voluntary
19 agreement, except as provided in sub. (5). These time limitations do not apply to
20 placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary
21 agreements may be made only under this subsection and sub. (5) (b) and shall be in
22 writing and shall specifically state that the agreement may be terminated at any
23 time by the parent ~~or~~, guardian, or Indian custodian or by the child if the child's
24 consent to the agreement is required. In the case of an Indian child who is placed
25 under this subsection by the voluntary agreement of the Indian child's parent or

1 Indian custodian, the voluntary consent of the parent or Indian custodian to the
2 placement shall be given as provided in s. 48.028 (5) (a). The child's consent to the
3 agreement is required whenever the child is 12 years of age or older.

4 **SECTION 170.** 48.63 (4) of the statutes is amended to read:

5 48.63 (4) A permanency plan under s. 48.38 is required for each child placed
6 in a foster home or treatment foster home under sub. (1). If the child is living in a
7 foster home or treatment foster home under a voluntary agreement, the agency that
8 negotiated or acted as intermediary for the placement shall prepare the permanency
9 plan within 60 days after the date on which the child was removed from his or her
10 home under the voluntary agreement. A copy of each plan shall be provided to the
11 child if he or she is 12 years of age or over ~~and~~, to the child's parent or guardian, ~~and~~,
12 if the child is an Indian child, to the Indian child's Indian custodian and tribe. If the
13 agency that arranged the voluntary placement intends to seek a court order to place
14 the child outside of his or her home at the expiration of the voluntary placement, the
15 agency shall prepare a revised permanency plan and file that revised plan with the
16 court prior to the date of the hearing on the proposed placement.

17 **SECTION 171.** 48.63 (5) (b) of the statutes is amended to read:

18 48.63 (5) (b) If a child who is at least 14 years of age, who is a custodial parent,
19 as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe
20 and structured living arrangement and the parent ~~or~~, guardian, or Indian custodian
21 of the child consent, a child welfare agency licensed to place children in group homes
22 may place the child or arrange the placement of the child in a group home described
23 in s. 48.625 (1m). Before placing a child or arranging the placement of a child under
24 this paragraph, the child welfare agency shall report any suspected abuse or neglect
25 of the child as required under s. 48.981 (2). A voluntary agreement to place a child

1 in a group home described in s. 48.625 (1m) may be made only under this paragraph,
2 shall be in writing, and shall specifically state that the agreement may be terminated
3 at any time by the parent, guardian, Indian custodian, or child. In the case of an
4 Indian child who is placed in a group home under this paragraph by the voluntary
5 agreement of the Indian child's parent or Indian custodian, the voluntary consent of
6 the parent or Indian custodian to the placement shall be given as provided in s.
7 48.028 (5) (a). An initial placement under this paragraph may not exceed 180 days
8 from the date on which the child was removed from the home under the voluntary
9 agreement, but may be extended as provided in par. (d) 3. to 6. An initial placement
10 under this paragraph of a child who is under 16 years of age on the date of the initial
11 placement may be extended as provided in par. (d) 3. to 6. no more than once.

12 **SECTION 172.** 48.63 (5) (c) of the statutes is amended to read:

13 48.63 (5) (c) A permanency plan under s. 48.38 is required for each child placed
14 in a group home under par. (b) and for any child of that child who is residing with that
15 child. The agency that placed the child or that arranged the placement of the child
16 shall prepare the plan within 60 days after the date on which the child was removed
17 from his or her home under the voluntary agreement and shall provide a copy of the
18 plan to the child ~~and~~, the child's parent or guardian, and, if the child is an Indian
19 child, the Indian child's Indian custodian and tribe.

20 **SECTION 173.** 48.63 (5) (d) 3. of the statutes is amended to read:

21 48.63 (5) (d) 3. If the agency that has placed a child under par. (b) or that has
22 arranged the placement of the child wishes to extend the placement of the child, the
23 agency shall prepare a revised permanency plan for that child and for any child of
24 that child who is residing with that child and submit the revised permanency plan
25 or plans, together with a request for a review of the revised permanency plan or plans

1 and the child's placement, to the independent reviewing agency before the expiration
2 of the child's placement. The request shall include a statement that an extension of
3 the child's placement would be in the best interests of the child, together with reliable
4 and credible information in support of that statement, a statement that the child and
5 the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension of
6 the child's placement, and a request that the independent reviewing agency approve
7 an extension of the child's placement. On receipt of a revised permanency plan or
8 plans and a request for review, the independent reviewing agency shall set a time and
9 place for the review and shall advise the agency that placed the child or that arranged
10 the placement of the child of the time and place of the review.

11 **SECTION 174.** 48.63 (5) (d) 4. of the statutes is amended to read:

12 48.63 (5) (d) 4. Not less than 10 days before the review, the agency that placed
13 the child or that arranged the placement of the child shall provide a copy of the
14 revised permanency plan or plans and the request for review submitted under subd.
15 3. and notice of the time and place of the review to the child, the parent, guardian,
16 and legal custodian of the child, ~~and the operator of the group home in which the child~~
17 ~~is placed, and, if the child is an Indian child, the Indian child's Indian custodian and~~
18 ~~tribe~~, together with notice of the issues to be determined as part of the permanency
19 plan review and notice of the fact that those persons may have the opportunity to be
20 heard at the review by submitting written comments to that agency or the
21 independent reviewing agency before the review or by participating at the review.

22 **SECTION 175.** 48.63 (5) (d) 5. of the statutes is amended to read:

23 48.63 (5) (d) 5. At the review, any person specified in subd. 4. may present
24 information relevant to the issue of extension and information relevant to the
25 determinations specified in s. 48.38 (5) (c). After receiving that information, the

independent reviewing agency shall make the determinations specified in s. 48.38 (5) (c) and determine whether an extension of the child's placement is in the best interests of the child and whether the child and the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension. If the independent reviewing agency determines that the extension is in the best interests of the child and that the child and the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension, the independent reviewing agency shall approve, in writing, an extension of the placement for a specified period of time not to exceed 6 months, stating the reason for the approval, and the agency that placed the child or that arranged the placement of the child may extend the child's placement for the period of time approved. If the independent reviewing agency determines that the extension is not in the best interests of the child or that the child and the parent ~~or~~, guardian, or Indian custodian of the child do not consent to the extension, the independent reviewing agency shall, in writing, disapprove an extension of the placement, stating the reason for the disapproval, and the agency that placed the child or that arranged the placement of the child may not extend the placement of the child past the expiration date of the voluntary placement unless the agency obtains a court order placing the child in the group home after the expiration date of the voluntary placement. Notwithstanding the approval of an extension under this subdivision, the child or the parent ~~or~~, guardian, or Indian custodian of the child may terminate the placement at any time during the extension period.

SECTION 176. 48.63 (5) (d) 6. of the statutes is amended to read:

48.63 (5) (d) 6. Within 30 days after the review, the agency that prepared the revised permanency plan or plans shall prepare a written summary of the determinations specified in s. 48.38 (5) (c) that were made under subd. 5. and shall

1 provide a copy of that summary to the independent reviewing agency, the child, the
2 parent, guardian, and legal custodian of the child, ~~and the operator of the group home~~
3 ~~in which the child was placed, and, if the child is an Indian child, the Indian child's~~
4 ~~Indian custodian and tribe.~~

5 **SECTION 177.** 48.83 (1) of the statutes is amended to read:

6 48.83 (1) The Except as provided in s. 48.028 (3) (b), the court of the county
7 where the proposed adoptive parent or child resides, upon the filing of a petition for
8 adoption or for the adoptive placement of a child, has jurisdiction over the child until
9 the petition is withdrawn, denied, or granted. Venue shall be in the county where
10 the proposed adoptive parent or child resides at the time the petition is filed. The
11 court may transfer the case to a court in the county in which the proposed adoptive
12 parents reside.

13 **SECTION 178.** 48.831 (1r) of the statutes is created to read:

14 48.831 (1r) NOTICE. When a petition is filed under sub. (1m), the court shall
15 provide notice of the fact-finding hearing under sub. (3) to all interested parties as
16 provided in s. 48.27 (6). If the court knows or has reason to know that the child is
17 an Indian child, the court shall provide notice to the Indian child's Indian custodian,
18 if any, and tribe, if known, in the manner specified in s. 48.028 (4) (a). No hearing
19 may be held under sub. (3) until at least 10 days after receipt of the notice by the
20 Indian child's Indian custodian and tribe. On request of the Indian child's Indian
21 custodian or tribe, the court shall grant a continuance of up to 20 additional days to
22 enable the requester to prepare for the hearing.

23 **SECTION 179.** 48.831 (2) of the statutes is amended to read:

24 48.831 (2) REPORT. If the department, county department, or child welfare
25 agency files a petition, ~~it shall submit~~ the court shall order the department, county

1 department, or child welfare agency to file a report to with the court containing as
2 much of the information specified under s. 48.425 (1) (a) and (am) as is reasonably
3 ascertainable and, if applicable, the information specified under s. 48.425 (1) (g). If
4 the petition is filed by a relative or other person specified under sub. (1m) (d), the
5 court shall order the department or a child welfare agency, if the department or
6 agency consents, or a county department to file a report containing the information
7 specified in this subsection. If the child is an Indian child, the court may order the
8 department, county department, or child welfare agency, or request the tribal ~~social~~
9 ~~services~~ department of the Indian child's tribe, if that department consents, to file
10 a report containing the information specified in this subsection. The department,
11 county department ~~or~~, child welfare agency, or tribal ~~social services~~ department, if
12 that department consents, shall file the report at least 5 days before the date of the
13 fact-finding hearing on the petition.

14 **SECTION 180.** 48.831 (4) (cm) of the statutes is created to read:

15 48.831 (4) (cm) If the child is an Indian child who is in the custody of an Indian
16 custodian, the court may not remove the child from the custody of the Indian
17 custodian under par. (c) unless the court finds by clear and convincing evidence,
18 including the testimony of one or more qualified expert witnesses, that continued
19 custody of the Indian child by the Indian custodian is likely to result in serious
20 emotional or physical damage to the child under s. 48.028 (4) (d) 1. and that the
21 department, county department, or child welfare agency has made active efforts
22 under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that those
23 efforts have proved unsuccessful. In placing an Indian child following a transfer of
24 guardianship and custody under par. (b) or (c), the custodian appointed under par.

(b) or (c) shall comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c).

SECTION 181. 48.833 of the statutes is amended to read:

48.833 Placement of children for adoption by the department, county departments and child welfare agencies. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department, or child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child. In placing an Indian child for adoption under this section, the department, county department, or child welfare agency shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c). When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department, or child welfare agency making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the proposed adoptive parent.

SECTION 182. 48.833 of the statutes, as affected by 2005 Wisconsin Acts 293 and 2007 Wisconsin Act (this act), is repealed and recreated to read:

48.833 Placement of children for adoption by the department, county departments, and child welfare agencies. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department,

1 or child welfare agency is the guardian of the child or makes the placement at the
2 request of another agency that is the guardian of the child and if the proposed
3 adoptive parents have completed the preadoption preparation required under s.
4 48.84 (1) or the department, county department, or child welfare agency determines
5 that the proposed adoptive parents are not required to complete that preparation.
6 In placing an Indian child for adoption under this section, the department, county
7 department, or child welfare agency shall comply with the order of placement
8 preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c). When a child is
9 placed under this section in a licensed foster home or a licensed treatment foster
10 home for adoption, the department, county department, or child welfare agency
11 making the placement shall enter into a written agreement with the proposed
12 adoptive parent, which shall state the date on which the child is placed in the licensed
13 foster home or licensed treatment foster home for adoption by the proposed adoptive
14 parent.

15 **SECTION 183.** 48.837 (2) (e) of the statutes is created to read:

16 48.837 (2) (e) If the child is an Indian child, the names and addresses of the
17 Indian child's Indian custodian, if any, and tribe, if known.

18 **SECTION 184.** 48.837 (4) (c) of the statutes is amended to read:

19 48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the
20 department or a county department under s. 48.57 (1) (e) or (hm) to investigate the
21 proposed adoptive placement, to interview each petitioner, to provide counseling if
22 requested, and to report its recommendation to the court at least 5 days before the
23 hearing on the petition. If a licensed child welfare agency or, in the case of an Indian
24 child, the tribal social services department of the Indian child's tribe has investigated
25 the proposed adoptive placement and interviewed the petitioners, the court may

child welfare

ch. 12 welfare

Use (2x)

1 accept a report and recommendation from the child welfare agency or tribal ~~social~~
2 ~~services~~ department in place of the court-ordered report required under this
3 paragraph. In reporting its recommendations under this paragraph with respect to
4 an Indian child, the department, a county department, child welfare agency, or tribal ~~social~~ *stat*
5 services department shall comply with the order of placement preference
6 under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c).

7 **SECTION 185.** 48.837 (4) (d) of the statutes is amended to read:

8 48.837 (4) (d) May, at the request of a petitioning parent, or on its own motion
9 after ordering the child taken into custody under s. 48.19 (1) (c), order the
10 department or a county department under s. 48.57 (1) (e) or (hm) to place the child,
11 pending the hearing on the petition, in any home licensed under s. 48.62 except the
12 home of the proposed adoptive parents or a relative of the proposed adoptive parents.
13 In placing an Indian child under this paragraph, the department or county
14 department shall comply with the order of placement preference under s. 48.028 (7)
15 (b) or, if applicable, s. 48.028 (7) (c).

16 **SECTION 186.** 48.837 (6) (c) of the statutes is amended to read:

17 48.837 (6) (c) After the hearing on the petition under sub. (2), the court shall
18 make findings on the allegations of the petition and the report ordered under sub.
19 (4) (c) and make a conclusion as to whether placement in the home is in the best
20 interest of the child. In determining whether placement of an Indian child in the
21 home is in the best interest of the Indian child, the court shall comply with the order
22 of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c).

23 **SECTION 187.** 48.85 (1) of the statutes is amended to read:

24 48.85 (1) At least 10 days prior to the hearing, the guardian shall file its
25 recommendation with the court. In making a recommendation under this subsection

1 with respect to an Indian child, the guardian shall comply with the order of
2 placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c).

3 **SECTION 188.** 48.88 (2) (a) (intro.) of the statutes is amended to read:

4 48.88 (2) (a) (intro.) Except as provided under par. ~~pars.~~ (am) and (c), when a
5 petition to adopt a child is filed, the court shall order an investigation to determine
6 whether the child is a proper subject for adoption and whether the petitioner's home
7 is suitable for the child. The court shall order one of the following to conduct the
8 investigation:

9 **SECTION 189.** 48.88 (2) (am) of the statutes is created to read:

10 48.88 (2) (am) If the child is an Indian child, in lieu of ordering an investigation
11 under par. (a), the court may request the tribal ~~social services~~ department of the
12 Indian child's tribe, if that department consents, to conduct the investigation. (use twice)

13 **SECTION 190.** 48.88 (2) (b) of the statutes is amended to read:

14 48.88 (2) (b) The agency or tribal ~~social services~~ department making the
15 investigation shall file its report with the court at least 10 days before the hearing
16 unless the time is reduced for good cause shown by the petitioner. In reporting on
17 an investigation of the proposed adoptive home of an Indian child, the agency or
18 tribal ~~social services~~ department shall comply with the order of placement preference
19 under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c). The report shall be part of
20 the record of the proceedings.

21 **SECTION 191.** 48.89 (1) of the statutes is amended to read:

22 48.89 (1) The recommendation of the department is required for the adoption
23 of a child if the child is not under the guardianship of a county department under s.
24 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5). In making a
25 recommendation under this subsection with respect to an Indian child, the

1 department shall comply with the order of placement preference under s. 48.028 (7)

2 (a) or, if applicable, s. 48.028 (7) (c).

3 **SECTION 192.** 48.91 (3) of the statutes is amended to read:

4 48.91 (3) If after the hearing and a study of the report required by s. 48.88 and
5 the recommendation required by s. 48.841 or 48.89, the court is satisfied that the
6 necessary consents or recommendations have been filed and that the adoption is in
7 the best interests of the child, the court shall make an order granting the adoption.
8 In determining whether the adoption is in the best interests of an Indian child, the
9 court shall comply with the order of placement preference under s. 48.028 (7) (a) or,
10 if applicable, s. 48.028 (7) (c). The order may change the name of the minor to that
11 requested by petitioners.

12 **SECTION 193.** 48.93 (1d) of the statutes is amended to read:

13 48.93 (1d) All records and papers pertaining to an adoption proceeding shall
14 be kept in a separate locked file and may not be disclosed except under sub. (1g) ~~or,~~
15 (1r), or (1v), s. 46.03 (29), 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or
16 by order of the court for good cause shown.

17 **SECTION 194.** 48.93 (1v) of the statutes is created to read:

18 48.93 (1v) (a) At the time a court enters an order granting adoption of an Indian
19 child, the court shall provide the U.S. secretary of the interior with the information
20 specified in s. 48.028 (9) (a) and (b).

21 (b) At the request of an Indian adoptee who is 18 years of age or older, the court
22 that entered the order granting adoption of the adoptee shall provide the adoptee
23 with the information specified in s. 48.028 (9) (c).

24 **SECTION 195.** 48.977 (2) (g) of the statutes is created to read:

or arrange to provide
or arrange to provide

1 48.977 (2) (g) In the case of an Indian child, that continued custody of the
2 Indian child by the parent or Indian custodian is likely to result in serious emotional
3 or physical damage to the child under s. 48.028 (4) (d) 1. and that the agency
4 primarily responsible for providing services to the Indian child under a court order
5 has made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian
6 family and that those efforts have proved unsuccessful.

7 **SECTION 196.** 48.977 (4) (a) 1. of the statutes is amended to read:

8 48.977 (4) (a) 1. The child or the child's guardian ~~or~~, legal custodian, or Indian
9 custodian.

10 **SECTION 197.** 48.977 (4) (b) 6. of the statutes is amended to read:

11 48.977 (4) (b) 6. A statement of whether the child may be subject to the federal
12 ~~Indian child welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, and, if the child may
13 be subject to that act, the names and addresses of the child's Indian custodian, if any,
14 and Indian tribe, if known.

15 **SECTION 198.** 48.977 (4) (b) 7. of the statutes is created to read:

16 48.977 (4) (b) 7. If the child is or may be an Indian child, reliable and credible
17 information showing that continued custody of the child by the child's parent or
18 Indian custodian is likely to result in serious emotional or physical damage to the
19 child under s. 48.028 (4) (d) 1. and reliable and credible information showing that the
20 person who took the child into custody and the intake worker have made active
21 efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that
22 those efforts have proved unsuccessful.

23 **SECTION 199.** 48.977 (4) (c) 1. j. of the statutes is created to read:

24 48.977 (4) (c) 1. j. If the child is an Indian child, the Indian child's Indian
25 custodian, if any, and tribe, if known.